

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

MAJOR SEAN BARNETT,

Plaintiff, :

Case No. 3:25-cv-070

- vs -

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

UNITED STATES OF AMERICA,

:

Defendant.

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**DECISION AND ENTRY DENYING MOTION FOR JUDICIAL  
NOTICE**

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This case is before the Court on Plaintiff's Motion for the Court to take Judicial Notice (ECF No. 33).

Fed. R. Evid. 201 allows a federal court to take judicial notice of adjudicative facts if they are generally known within the court's territorial jurisdiction or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. It is generally known, for example, that the intersection of Main and Third Streets is in Dayton, Ohio. It can be readily determined from an almanac whether the moon was full on a particular night.<sup>1</sup>

Plaintiff asks the Court to take judicial notice not of historical facts, but of the legal conclusions to be drawn from certain statements of Plaintiff and related statements of Defendant's counsel. Legal conclusions do not come within Fed. R. Evid. 201. Whether or not certain legal

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<sup>1</sup> Abraham Lincoln famously used the almanac to show there was no moon on a night a witness had claimed to observe a murder.

conclusions follow logically from statements made by the parties in pleadings is a legal question, not a factual question.

Plaintiff's argument for those legal conclusions is certainly appropriate. But the proper way to make that argument is to quote any statement made in the pleadings and then cite to its source in the record by giving the Court record citation in the form ECF [Electronic Case Filing] No. \_\_\_\_ PageID \_\_\_\_ where the ECF number is number of the filing on the docket and the PageID [Page Identification] is the page where the source is to be found. For example, Plaintiff's Motion for Judicial Notice is ECF No. 33 and its first page is PageID 362.

Plaintiff's Motion to Take Judicial Notice is DENIED. This is in no way an evaluation of the arguments Plaintiff makes, but instead a ruling that those arguments must be made in a memorandum. The legal conclusions in the Motion are not the proper subject of judicial notice.

July 22, 2025.

*s/ Michael R. Merz*  
United States Magistrate Judge